

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the SIRS Appeal of Josie
Mae Washington

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a Pre-Hearing Conference before Administrative Law Judge Eric L. Lipman on October 13, 2010, at the Saint Paul offices of the Office of Administrative Hearings.

Matthew D. Schwandt, Assistant Attorney General, appeared on behalf of the Minnesota Department of Human Services (Department). There was no appearance by, or on behalf of, Josie Mae Washington (Respondent). At the conclusion of the Pre-Hearing Conference, the hearing record closed.

STATEMENT OF THE ISSUES

1. Did the Department properly conclude that Respondent submitted claims for reimbursement for services she did not provide or for personal care services not eligible for payment in violation of Minnesota Statutes, section 256B.064, subdivision 1a (2008), and Minnesota Rules, part 9505.2165 (2009)?

2. Did the Department properly suspend Respondent's participation in the Minnesota Health Care Program (MHCP) (pursuant to Minnesota Statutes, sections 256B.064, subdivision 1b, and 256B.0655 (2008), and Minnesota Rules, parts 9505.0295, 9505.0335, and 9505.2160 through 9505.2243 (2009)) because of a pattern of obtaining reimbursement for services which she did not provide?

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On September 14, 2010, a Notice and Order for Prehearing Conference and Hearing (Notice and Order for Hearing) in this matter was mailed to Ms. Washington's home address in Minneapolis, Minnesota.¹ The Notice and Order for

¹ See, Affidavit of Judy Fusco (September 14, 2010).

Hearing indicated that a Prehearing Conference would be held in this matter on October 13, 2010.²

2. The Notice and Order for Hearing in this matter includes the following statement:

Respondent's failure to appear at the hearing or any prehearing conference, may result in a finding that the Respondent is in default, that the Department of Human Services' allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.³

3. No one appeared at the October 13, 2010 conference on behalf of Josie Mae Washington. No prehearing request was made for a continuance, nor was any communication received by the undersigned from Ms. Washington.

4. The Allegations state that:

a) Josie Mae Washington was employed as a Personal Care Assistant (PCA), as defined by Minnesota Statutes, section 256B.0655, subdivision 1(f) (2008) (*repealed by* 2009 Minn. Laws ch. 79, art. 8, § 86, effective January 1, 2010),⁴ by Life Care PCA, LLC, a personal care provider organization, as defined by section 256B.0655, subdivision 1(g) (2008) (*repealed by* 2009 Minn. Laws ch. 79, art. 8, § 86, effective January 1, 2010).⁵

b) Washington submitted time sheets reporting personal care services provided through Life Care PCA for multiple dates of services when she did not provide the care. For example, on June 14, 2007, Washington reported providing care to client J.A. from 7:00 p.m. to 9:45 p.m., but also documented providing care to client T.Y. from 7:00 p.m. to 11:30 p.m. on the same day.

c) Washington provided care to client J.A., Washington's minor son, on numerous occasions.

d) On January 26, 2009, the Department issued a Notice of Agency Action suspending Washington's participation as a provider in the MHCP for two years as a result of Washington submitting

² Notice and Order for Hearing, at 1.

³ Notice and Order for Hearing, at 3, ¶ 1.

⁴ A personal care assistant is now defined by Minn. Stat. § 256B.0659, subd. 1(l) (2009).

⁵ The statutory changes adopted in 2009 changed the terminology of personal care provider organization to "personal care assistance provider agency." See Minn. Stat. § 256B.0659, subd. 1(k) (2009).

claims for personal care services she did not provide or for personal care services not eligible for payment.

e) On February 10, 2009, Washington submitted a letter requesting an appeal of the Department's decision.

5. The statements contained in the Allegations are deemed proven and are incorporated into these Findings by reference.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 256B.064.

2. Respondent received notice of the charges against her and of the time and place of the evidentiary hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. Respondent is in default as a result of her failure, without the Administrative Law Judge's prior consent, to appear at the scheduled Pre-Hearing Conference.

4. Pursuant to Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. Upon default, the statements and claims set forth in the Allegations may be taken as true or deemed proved without further evidence.

5. Based upon the facts set forth in the allegations, Respondent submitted claims for reimbursement for services she did not provide or for personal care services not eligible for payment, in violation of Minn. Stat. § 256B.064, subd. 1a (2008), and Minn. R. 9505.2165 (2009).

6. Based upon the facts set forth in the allegations, the Department properly suspended Washington's participation in MHCP based on a pattern of obtaining reimbursement for services she did not provide, pursuant to Minn. Stat. §§ 256B.064, subd. 1b, and 256B.0655 (2008), and Minn. R. parts 9505.0295, 9505.0335, and 9505.2160 through 9505.2245 (2009).

7. Minn. Stat. §§ 256B.064, subd. 1b (2008) empowers the Commissioner to take disciplinary action against the Respondent for the conduct described above.

Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that disciplinary action be taken against Josie Mae Washington.

Dated: October 27, 2010

/s/ Eric L. Lipman

ERIC L. LIPMAN

Administrative Law Judge

Reported: Digital Recording
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Cal Ludeman, Commissioner, Department of Human Services, P.O. Box 64998, St. Paul, MN 55164 (651) 431-2907 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.